

conducted after the final rejection in that case, Applicants agreed to file this continuation along with the remaining claims from the parent application.

In that personal interview, Applicants and the Examiner agreed that Applicants would file a continuation application claiming priority to that application. Additionally, the Examiner requested that this preliminary statement accompany the continuation to remind the Examiner of Applicants' arguments made during the personal interview.

Applicants' Arguments With Respect to the Cited References

The Claims Contain a Limitation Not Found in the Cited References

In the parent case, the Examiner rejected the remaining claims under 35 U.S.C. § 103 as obvious in light of the combination of U.S. Patent No. 5,093,924 (hereinafter "Toshiyuki"), U.S. Patent No. 5,784,363 (hereinafter "Engstrom"), and U.S. Patent No. 5,408,681 (hereinafter "Ressler"). Without conceding the appropriateness of Examiner's characterizations of the prior art or of the application, it is respectfully submitted that the claims are allowable because they contain at least one limitation that is not found in the prior art. In particular, the references fail to disclose the following limitation:

simultaneously transmitting a given set of packet data from a base station to a given terminal over a plurality of frequencies from a list of optimal frequencies identified for the given terminal.

Using independent claim 1 as an exemplary claim, the Examiner notes in the Office Action that the above-referenced recitation from claim 1 is missing from both Toshiyuki and Engstrom, either alone or in combination. The Examiner attempts to make up for the missing limitation by citing Ressler, stating that Ressler discloses an automatic repeater station simultaneously transmitting signals over a range of frequencies. Without conceding the Examiner's characterization of Ressler, it is respectfully submitted that Ressler does not disclose the above-referenced recitation from the present invention, for at least the following reasons.

Claim 1 recites simultaneously transmitting a given set of packet data from a base station to a given terminal. From the specification in the application, one can plainly see that the recitation refers to transmitting simultaneously a message ("a given set of packet data")

over more than one channel. This message is then received at a terminal (the recipient of the message) over the plurality of channels, and then reassembled into the message.

This feature of the present invention is clearly not disclosed in Ressler. Rather, Ressler involves transmitting "signals" from a plurality of antennae over a plurality of channels. (See Ressler, col. 2, lines 23-29) These "signals" are not a single message ("a given set of packet data") as is recited in claim 1 of the present invention. Of course, the repeater station in Ressler is responsible for sending many "signals," and does so over a plurality of channels. This feature, however, is completely different from the present invention, which recites a single message sent simultaneously over a plurality of channels.

Thus, because at least this limitation does not exist in the prior art, it is respectfully submitted that independent claim 1 distinguishes over the prior art and so is allowable.

Additionally, because all the claims in the application either contain the above-mentioned recitation, or depend from a claim that contains the above-mentioned recitation, it is respectfully submitted that all the claims are allowable, for at least the reason given above.

The References Are Not Properly Combinable

When a rejection depends upon a combination of prior-art references, there must be some teaching, suggestion, or motivation to combine the references. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references". See Ex Parte Clapp, 227 USPQ 972, 973 (BPAI 1985). See MPEP 706.02(j). Neither Toshiyuki, Engstrom, nor Ressler contain such a teaching, suggestion or motivation, and the Examiner does not provide any detailed explanation of why such a combination is suggested.

Thus, even if all the claim limitations in the present application were found to exist in the prior art, the Examiner has not detailed a suggestion to combine the three cited references, and so there is no prima-facie case of obviousness.

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